



House of Representatives

File No. 633

General Assembly

February Session, 2002

(Reprint of File No. 389)

Substitute House Bill No. 5514
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 4, 2002

**AN ACT CONCERNING BANK ACCOUNT EXECUTIONS AND THE
OPENING OF JUDGMENTS OF STRICT FORECLOSURE.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 52-367b of the general statutes, as amended by
2 section 1 of public act 01-196 and section 12 of public act 01-9 of the
3 June special session, is repealed and the following is substituted in lieu
4 thereof (*Effective January 1, 2003*):

5 (a) Execution may be granted pursuant to this section against any
6 debts due from any banking institution to a judgment debtor who is a
7 natural person, except to the extent such debts are protected from
8 execution by sections 52-352a, 52-352b, 52-352c, of the general statutes,
9 revision of 1958, revised to 1983, 52-354 of the general statutes, revision
10 of 1958, revised to 1983, 52-361 of the general statutes, revision of 1958,
11 revised to 1983 and section 52-361a, as well as by any other laws or
12 regulations of this state or of the United States which exempt such
13 debts from execution.

14 (b) If execution is desired against any such debt, the plaintiff

15 requesting the execution shall notify the clerk of the court. In a IV-D
16 case, the request for execution shall be accompanied by an affidavit
17 signed by the [levying] serving officer attesting to an overdue support
18 amount of five hundred dollars or more which accrued after the entry
19 of an initial family support judgment. If the papers are in order, the
20 clerk shall issue such execution containing a direction that the officer
21 serving [the same] such execution shall, within seven days from the
22 receipt by the serving officer of such execution, make demand (1) upon
23 the main office of any banking institution having its main office within
24 the county of [such] the serving officer, or (2) if such main office is not
25 within [such] the serving officer's county and such banking institution
26 has one or more branch offices within such county, upon an employee
27 of such a branch office, such employee and branch office having been
28 designated by the banking institution in accordance with regulations
29 adopted by the Commissioner of Banking, in accordance with chapter
30 54, for payment of any such nonexempt debt due to the judgment
31 debtor and, after having made such demand, shall serve a true and
32 attested copy of the execution, together with the affidavit and
33 exemption claim form prescribed by subsection (k) of this section, with
34 [such] the serving officer's [doings] actions endorsed thereon, with the
35 banking institution officer upon whom such demand is made. If the
36 officer serving such execution has made an initial demand pursuant to
37 this subsection within such seven-day period, the serving officer may
38 make additional demands [on] upon the main office of other banking
39 institutions or employees of other branch offices pursuant to
40 subdivision (1) or (2) of this subsection, provided any such additional
41 demand is made not later than forty-five days from the receipt by the
42 serving officer of such execution.

43 (c) If any such banking institution upon which such execution is
44 served and upon which such demand is made is indebted to the
45 judgment debtor, [it] the banking institution shall remove from the
46 judgment debtor's account the amount of such indebtedness not
47 exceeding the amount due on such execution before its midnight
48 deadline, as defined [by] in section 42a-4-104. Notwithstanding the

49 provisions of this subsection, if electronic direct deposits that are
50 readily identifiable as exempt federal veterans' benefits, Social Security
51 benefits, including, but not limited to, retirement, survivors' and
52 disability benefits, [or] supplemental security income benefits or child
53 support payments processed and received pursuant to Title IV-D of
54 the Social Security Act were made to the judgment debtor's account
55 during the thirty-day period preceding the date that the execution was
56 served on the banking institution, then a banking institution shall
57 leave the lesser of the account balance or [eight hundred] one thousand
58 dollars in the judgment debtor's account, [:] provided nothing in this
59 subsection shall be construed to limit a [bank's] banking institution's
60 right or obligation to remove such funds from the judgment debtor's
61 account if required by any other provision of law or by a court order.
62 The judgment debtor shall have access to such funds left in the
63 judgment debtor's account pursuant to this subsection. The banking
64 institution may notify the judgment creditor that funds have been left
65 in the judgment debtor's account pursuant to this subsection. Nothing
66 in this subsection shall alter the exempt status of funds which are
67 exempt from execution under subsection (a) of this section or under
68 any other provision of state or federal law, or the right of a judgment
69 debtor to claim such exemption. Nothing in this subsection shall be
70 construed to affect any other rights or obligations of the banking
71 institution with regard to the funds in the judgment debtor's account.

72 (d) If any funds are removed from the judgment debtor's account
73 pursuant to subsection (c) of this section, upon receipt of the execution
74 and exemption claim form from the serving officer, the banking
75 institution shall forthwith mail copies thereof, postage prepaid, to the
76 judgment debtor at the judgment debtor's last known address with
77 respect to the affected accounts on the records of the banking
78 institution. The banking institution shall hold the amount removed
79 from the judgment debtor's account pursuant to subsection (c) of this
80 section for fifteen days from the date of the mailing to the judgment
81 debtor and during such period shall not pay the serving officer.

82 (e) To prevent the banking institution from paying the serving

83 officer, as provided in subsection (h) of this section, the judgment
84 debtor shall give notice of a claim of exemption by delivering to the
85 banking institution, by mail or other means, the exemption claim form
86 or other written notice that an exemption is being claimed. The
87 banking institution may designate an address to which the notice of a
88 claim of exemption shall be delivered. Upon receipt of such notice, the
89 banking institution shall, within two business days, send a copy of
90 such notice to the clerk of the court which issued the execution.

91 (f) (1) Upon receipt of an exemption claim form, the clerk of the
92 court shall enter the appearance of the judgment debtor with the
93 address set forth in the exemption claim form. The clerk shall
94 forthwith send file-stamped copies of the form to the judgment
95 creditor and judgment debtor with a notice stating that the disputed
96 [assets] funds are being held for forty-five days from the date the
97 exemption claim form was received by the banking institution or until
98 a court order is entered regarding the disposition of the funds,
99 whichever occurs earlier, and the clerk shall automatically schedule
100 the matter for a short calendar hearing. The claim of exemption filed
101 by such judgment debtor shall be prima facie evidence at such hearing
102 of the existence of the exemption.

103 (2) Upon receipt of notice from the banking institution pursuant to
104 subsection (c) of this section, a judgment creditor may, on an ex parte
105 basis, present to a judge of the Superior Court an affidavit sworn
106 under oath by a competent party demonstrating a reasonable belief
107 that such judgment debtor's account contains funds which are not
108 exempt from execution and the amount of such nonexempt funds.
109 Such affidavit shall not be conclusory but is required to show the
110 factual basis upon which the reasonable belief is based. If such judge
111 finds that the judgment creditor has demonstrated a reasonable belief
112 that such judgment debtor's account contains funds which are not
113 exempt from execution, such judge shall authorize the judgment
114 creditor to submit a written application to the clerk of the court for a
115 hearing on the exempt status of funds left in the judgment debtor's
116 account pursuant to subsection (c) of this section. The judgment

117 creditor shall promptly send a copy of the application and the
118 supporting affidavit to the judgment debtor. Upon receipt of such
119 application, the clerk of the court shall automatically schedule the
120 matter for a short calendar hearing and shall give written notice to
121 both the judgment creditor and the judgment debtor. The notice to the
122 judgment creditor pursuant to subsection (c) of this section shall be
123 prima facie evidence at such hearing that the funds in the account are
124 exempt funds. The burden of proof shall be upon the judgment
125 creditor to establish the amount of funds which are not exempt.

126 (g) If an exemption claim is made pursuant to subsection (e) of this
127 section, the banking institution shall continue to hold the amount
128 removed from the judgment debtor's account for forty-five days or
129 until a court order is received regarding disposition of the funds,
130 whichever occurs earlier. If no such order is received within forty-five
131 days of the date the banking institution sends a copy of the exemption
132 claim form or notice of exemption to the clerk of the court, the banking
133 institution shall return the funds to the judgment debtor's account.

134 (h) If no claim of exemption is received by the banking institution
135 within fifteen days of the mailing to the judgment debtor of the
136 execution and exemption claim form pursuant to subsection (d) of this
137 section, the banking institution shall, upon demand, forthwith pay the
138 serving officer the amount removed from the judgment debtor's
139 account, and the serving officer shall thereupon pay such sum, less
140 such serving officer's fees, to the judgment creditor, except to the
141 extent otherwise ordered by a court.

142 (i) The court, after a hearing conducted pursuant to subsection (f) of
143 this section, shall enter an order determining the issues raised by the
144 claim of exemption. The clerk of the court shall forthwith send a copy
145 of such order to the banking institution. Such order shall be deemed to
146 be a final judgment for the purposes of appeal. No appeal shall be
147 taken except within seven days of the rendering of the order. The order
148 of the court may be implemented during such seven-day period,
149 unless stayed by the court.

150 (j) If both exempt and nonexempt moneys have been deposited into
151 an account, for the purposes of determining which moneys are exempt
152 under this section, the moneys most recently deposited as of the time
153 the execution is [levied] served shall be deemed to be the moneys
154 remaining in the account.

155 (k) The execution, exemption claim form [, execution] and clerk's
156 notice regarding the filing of a claim of exemption shall be in such
157 form as prescribed by the judges of the Superior Court or their
158 designee. The exemption claim form shall be dated and include a
159 checklist and description of the most common exemptions, instructions
160 on the manner of claiming the exemptions [,] and a space for the
161 judgment debtor to certify those exemptions claimed under penalty of
162 false statement.

163 (l) If records or testimony are subpoenaed from a banking
164 institution in connection with a hearing conducted pursuant to
165 subsection (f) of this section, the reasonable costs and expenses of the
166 banking institution in complying [therewith] with the subpoena shall
167 be recoverable by [it] the banking institution from the party requiring
168 such records or testimony, provided, the banking institution shall be
169 under no obligation to attempt to obtain records or documentation
170 relating to the account executed against which are held by any other
171 banking institution. The records of a banking institution as to the dates
172 and amounts of deposits into an account in [such] the banking
173 institution shall, if certified as true and accurate by an officer of the
174 banking institution, be admissible as evidence without the presence of
175 the officer in any hearing conducted pursuant to subsection (f) of this
176 section to determine the legitimacy of a claim of exemption made
177 under this section.

178 (m) If there are moneys to be removed from the judgment debtor's
179 account, prior to the removal of such moneys pursuant to subsection
180 (c) of this section, the banking institution shall receive from the serving
181 officer as representative of the judgment creditor a fee of eight dollars
182 for [its] the banking institution's costs in complying with the

183 provisions of this section which fee may be recoverable by the
184 judgment creditor as a taxable cost of the action.

185 (n) If the banking institution fails or refuses to pay over to the
186 serving officer the amount of such debt, not exceeding the amount due
187 on such execution, such banking institution shall be liable in an action
188 therefor to the judgment creditor named in such execution for the
189 amount of nonexempt moneys which [it] the banking institution failed
190 or refused to pay over, excluding funds of up to [eight hundred] one
191 thousand dollars which the banking institution in good faith allowed
192 the judgment debtor to access pursuant to subsection (c) of this section.
193 The amount so recovered by such judgment creditor shall be applied
194 toward the payment of the amount due on such execution. Thereupon,
195 the rights of the banking institution shall be subrogated to the rights of
196 the judgment creditor. If such banking institution pays exempt moneys
197 from the account of the judgment debtor over to the serving officer
198 contrary to the provisions of this section, such banking institution shall
199 be liable in an action therefor to the judgment debtor for any exempt
200 moneys so paid and such banking institution shall refund or waive any
201 charges or fees by the [bank] banking institution, including, but not
202 limited to, dishonored check fees, overdraft fees or minimum balance
203 service charges and legal process fees, which were assessed as a result
204 of such payment of exempt moneys. Thereupon, the rights of the
205 banking institution shall be subrogated to the rights of the judgment
206 debtor.

207 (o) Except as provided in subsection (n) of this section, no banking
208 institution or any officer, director or employee [thereof] of such
209 banking institution shall be liable to any person with respect to
210 [anything] any act done or omitted in good faith or through the
211 commission of a bona fide error that occurred despite reasonable
212 procedures maintained by the banking institution to prevent such
213 errors in complying with the provisions of this section.

214 (p) Nothing in this section shall in any way restrict the rights and
215 remedies otherwise available to a judgment debtor at law or in equity.

216 (q) Nothing in this section shall in any way affect any rights of the
217 banking institution with respect to uncollected funds credited to the
218 account of the judgment debtor, which rights shall be superior to those
219 of the judgment creditor.

220 (r) For the purposes of this subsection, "exempt" shall have the same
221 meaning as provided in subsection (c) of section 52-352a. Funds
222 deposited in an account that has been established for the express
223 purpose of receiving electronic direct deposits of public assistance
224 payments from the Department of Social Services shall be exempt.

225 Sec. 2. Section 49-15 of the general statutes is repealed and the
226 following is substituted in lieu thereof (*Effective from passage*):

227 (a) Any judgment foreclosing the title to real estate by strict
228 foreclosure may, at the discretion of the court rendering the same,
229 upon the written motion of any person having an interest therein, and
230 for cause shown, be opened and modified, notwithstanding the
231 limitation imposed by section 52-212a, upon such terms as to costs as
232 the court deems reasonable; but no such judgment shall be opened
233 after the title has become absolute in any encumbrancer.

234 (b) Upon the filing of a bankruptcy petition by a mortgagor under
235 Chapter 13 of Title 11 of the United States Code, any judgment against
236 the mortgagor foreclosing the title to real estate by strict foreclosure
237 shall be opened automatically without action by any party or the court,
238 provided, the provisions of such judgment, other than the
239 establishment of law days, shall not be set aside under this subsection;
240 but no such judgment shall be opened after the title has become
241 absolute in any encumbrancer or the mortgagee, or any person
242 claiming under such encumbrancer or mortgagee.

This act shall take effect as follows:	
Section 1	<i>January 1, 2003</i>
Sec. 2	<i>from passage</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Fund-Type	Agency Affected	FY 03 \$	FY 04 \$
GF - Revenue Loss	Department of Administrative Services	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a potential minimal revenue loss to state General Fund collections. The bill 1) increases the amount of funds, from \$800 to \$1,000, that banks are required to leave in a debtor's account when served with court-ordered judgments against the debtor if he recently received by electronic direct deposit a "readily identifiable" exempt government benefit, and 2) adds child support payments the state collects and electronically deposits in the debtor's account subject to this protection.

Currently, debtors can claim that certain funds are exempt and the superior court must decide whether or not the funds can be executed. Since child support payments are collected and deposited by the courts, it is possible that many superior court rulings protected them from creditors.

House Amendment "A" adds a provision concerning bankruptcy and mortgage foreclosure and has no fiscal impact.

OLR Amended Bill Analysis

sHB 5514 (as amended by House "A")*

AN ACT CONCERNING BANK ACCOUNT EXECUTIONS**SUMMARY:**

By law, a creditor may obtain a court-ordered judgment against someone who owes him money (debtor) in certain circumstances. The creditor can execute or serve this order on any banking institution (banks, savings and loans, and credit unions; hereafter "bank") where the debtor has an account. This bill increases, from \$800 to \$1,000, the amount the bank must leave in the account if the debtor recently received by electronic direct deposit "readily identifiable" exempt federal veterans' or Social Security benefits. It also makes child support payments the state collects and electronically deposits into a parent's bank account subject to the same protection.

The bill also automatically opens strict foreclosure judgments when a mortgagor/debtor files a bankruptcy petition under Chapters 11 or 13 of the federal Bankruptcy Code, so long as full ownership of the relevant property has not already passed to someone else. The bill states that the only portion of the foreclosure judgment that can be set aside is the setting of "law days." By law, this is the period within which a debtor must repay the debt or lose all rights to the property.

The opening of the judgment appears to trigger the federal bankruptcy law's automatic stay provision, thus permitting the bankruptcy court to give the debtor/mortgagor more time to work out a repayment or reorganization plan.

Finally, the bill makes technical and conforming changes.

*House Amendment "A" adds the bankruptcy filing provisions.

EFFECTIVE DATE: January 1, 2003, except the bankruptcy filing provisions are effective on passage.

BACKGROUND

Bank and Creditor Obligations

By law, creditors cannot attach or seize exempt funds to satisfy a court judgment. State and federal law exempt such funds as Social Security and federal veterans' benefits, state welfare, child support, pensions, \$268 per week in wages, and a \$1,000 "wild card." Exempt funds retain this status when deposited into a bank.

When a creditor serves an order on the debtor's bank, the bank must ignore \$800 in the debtor's account (or the entire account balance if less than \$800) if a readily identifiable exempt federal veterans' or Social Security benefit was directly deposited electronically within the past 30 days. Banks that exclude this money in good faith or do so by mistake are exempt from liability to creditors for doing so, but creditors can ask for a court hearing when they believe that any of the funds a bank withheld are not exempt.

Except as described above, banks served with such orders must remove funds from the account up to the full amount of the judgment and mail the account holder notice and a form he must return to the bank within 15 days if he claims that any of the removed funds were exempt.

If the account holder does not return the claim form to the bank within 15 days, the bank pays over the funds to the creditor on request. But if he claims an exemption within the allowable period, the bank must notify the Superior Court and continue to hold the funds for the earlier of 45 days or until a court issues a disposition order for the disputed funds.

Related Bankruptcy Case

In *Canney v. Merchants Bank*, the U.S. Court of Appeals for the Second Circuit held that, once a state court issues a strict foreclosure judgment, a defaulting mortgagor cannot gain an indefinite extension of time to cure the default by filing a bankruptcy petition. Overruling prior bankruptcy court holdings, *Canney* allowed the bank that had gotten the foreclosure judgment to take full title to the property when neither the bankruptcy trustee nor the debtor/mortgagor redeemed the mortgage within the later of (1) the passing of the law days set in the foreclosure judgment and (2) 60 days of the bankruptcy filing.

Legislative History

On April 12, the House referred the bill (File 389) to the Banks Committee, which reported it favorably on April 17.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0

Banks Committee

Joint Favorable Report

Yea 15 Nay 0